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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,513	03/10/2004	Kazuhiro Yasuda	14470.31US01	8757
52835	7590	12/19/2005	EXAMINER	
HAMRE, SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902-0902 MINNEAPOLIS, MN 55402			MCMAHON, MARGUERITE J	
			ART UNIT	PAPER NUMBER
			3747	
DATE MAILED: 12/19/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/798,513

Applicant(s)

YASUDA ET AL.

Examiner

Marguerite J. McMahon

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,7,10,13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7,10,13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 7, 10, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kostun (6,427,112) or Akihisa et al (6,155,224) in view of Hirano et al (6,655,337). Note Figure 8 of Kostun, which shows first and second resonators (146, 162), air cleaner (148), and throttle body 156. Note Figure 14 of Akihisa et al, which shows resonators (107, 110, 109), air cleaner (100), and throttle body 101. Both Kostun and Akihisa et al show everything except utilizing a carburetor, disposing the first and second resonators within a width of the air cleaner case, and employing the device in four-wheeled vehicles.

Hirano et al (6,655,337) teaches that it is old in the art to substitute a carburetor for a throttle body ( see column 2 , lines 16-18). It would have been obvious to modify Kostun or Akihisa et al by replacing the throttle bodies 156, 101 with carburetors, in order to change the engine from the fuel injection type into a carburetor type, as these are art recognized alternatives, known for the same purpose of providing fuel to the engine.

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In addition, it would have been obvious to one having ordinary skill in the art to modify Kostun or Akihisa et al by disposing the first and second resonators within a width of the air cleaner case, since it has been held that rearranging parts of an invention involves only routine skill in the art, *In re Japikse*, 86 USPQ 70, and a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Finally, it would have been obvious to one having ordinary skill in the art to employ the device in four-wheeled vehicles, as this is a conventional use for an internal combustion engine.

### ***Response to Arguments***

Applicant's arguments filed 10/5/05 have been fully considered but they are not persuasive. Applicant argues that neither Kostun or Akihisa show a carburetor and therefore do not show the second resonator located between the air cleaner and the carburetor. In the above rejection, Hirano et al has been relied upon to teach that it is old in the art to replace a throttle body with a carburetor, as these are art recognized alternatives. If the throttle bodies of Kostun and Akihisa are replaced with carburetors, then in each instance the second resonator is located between the respective air cleaners and carburetors.

Applicant further argues that neither Kostun or Akihisa show disposing the first and second resonators are disposed within a width of the air cleaner. The examiner has acknowledges that this feature is not shown, since, as pointed out by applicant,

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neither reference discloses a view of the air cleaner that would permit determination as to whether the resonators are within the width of the air cleaner. However, this is not considered to be a patentable distinction, since, as pointed out in the above rejection, it would have been obvious to one having ordinary skill in the art to modify Kostun or Akihisa et al by disposing the first and second resonators within a width of the air cleaner case, since it has been held that rearranging parts of an invention involves only routine skill in the art, *In re Japikse*, 86 USPQ 70, and a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955). Thus, it is considered obvious by the examiner to dispose the resonators in a width of the air cleaner case, in order to meet space limitations.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marguerite J. McMahon whose telephone number is 703-308-1956. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yuen Henry can be reached on 703-308-1946. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
MARGUERITE MCMAHON  
PRIMARY EXAMINER